

**KENTUCKY PERSONNEL BOARD
MINUTES OF OCTOBER 12, 2007**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman
Tina Goodmann, Vice-Chairman
Betty Gibson, Member
Lisa T. Hendricks, Member
Rosemary F. Center, Member
Jackson M. Andrews, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board personnel not present:

Robert B. Frazer, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD SEPT. 14, 2007**

The minutes of the last Board meeting had been circulated among the members previously. Chairman Higgins asked for additions or corrections. Ms. Gibson moved to approve the minutes as submitted, Mr. Andrews seconded, and the motion carried 5-0 (Chairman Higgins does not vote unless noted). The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek advised that the Aukerman/Powell County supplement to the investigation is in draft form and will be provided to the Board members at the next Board meeting.

Mr. Sipek advised that the Board members should have received copies of three Franklin Circuit Court decisions. In each case, the Personnel Board was upheld.

Mr. Sipek stated that he was a speaker at the annual Equal Employment Opportunity (EEO) Conference, in a joint presentation with Linda Patrick, who is with the Personnel Cabinet's Mediation Program.

4. PERSONNEL CABINET'S REPORT

Secretary Brian Crall and Mr. Tom Stephens were present for the Personnel Cabinet and reported the following:

First, Secretary Crall wished Ms. Center a "Happy Birthday." Secretary Crall then asked the Board if they had any questions relating to the Summary Plan Description (SPD) concerning the 2008 Employee Health Insurance. Chairman Higgins stated that he was pleased the health insurance premiums were kept down and thanked Secretary Crall for the Cabinet's efforts. No questions were presented, so Secretary Crall advised the Board that an official vote of approval was needed.

Ms. Hendricks moved to approve the SPD. Ms. Center seconded and the motion carried 5-0.

Mr. Stephens advised that there were a few stumbling blocks in regards to removing written reprimands from personnel files:

- If a written reprimand was removed from the official personnel file, does that create a record retention policy issue (i.e. different agencies may have different retention schedules).
- The Personnel Cabinet retains the official personnel file for all employees and each agency retains a personnel file. Could that cause a problem later if the written reprimand was destroyed, when it might later be relevant to a new concern (i.e. in a federal cause of action or another claim). Mr. Stephens advised that Mr. Crocker has spoken with staff at Libraries and Archives (who publish the official records retention schedule for state government). They expressed a general interest in a regulatory format to operate any removal. Mr. Stephens further stated that historically documents that were purged from individual files are held, then stored until they could be destroyed according to the Personnel Cabinet's own retention scheduled.

Secretary Crall stated that they would like to present a final draft of the regulation to the Board at the next meeting. Chairman Higgins advised that a special meeting for a review proposed regulations was set for November 2, 2007. Mr. Stephens asked if the Cabinet could present their regulation at that meeting. Chairman Higgins advised it would be discussed further by the Board and he would let them know.

Mr. Stephens advised that they looked at the proposed changes to KRS 18A, as provided by the Board, and presented it to Commissioner Hawkins. He stated that the Personnel Cabinet is in agreement with a lot of the changes, which would be discussed at a meeting with the Personnel Board. He stated that a combined approach to the Legislature would be more successful.

Secretary Crall stated that the Mediation Program, with all of its success, was not yet codified. Therefore, a draft of a new regulation (101 KAR 2:230) was presented for the Board's review. Mr. Stephens stated that although he felt Mr. Crocker and Mr. Sipek were more informed than he was as it relates to the mediation program, he could have someone to answer questions at the next Board meeting, if the Board so desired.

Secretary Crall presented a proposed regulation for multilingual supplemental pay (101 KAR 2:034). He stated as the culture grows more diverse there are issues in communicating with people who do not speak the same language. Making government services accessible to citizens is one of the Cabinet's responsibilities. Employees would get the supplemental premium if they provide the service. It is difficult to find employees in rural counties who are able to provide these services. The Health and Family Services Cabinet is pushing for this regulation.

Secretary Crall informed the Board that Dr. Penny Armstrong was not available to answer questions, due to a prior commitment, regarding the regulation on the Educational Assistance Program (101 KAR 2:220). Secretary Crall stated that one issue is whether the Kentucky State University has the ability to provide a service and, if not, can they approve a service at other educational outlets. Secretary Crall asked if the Board needed more time to review this regulation before voting. Chairman Higgins entertained a motion. No motion was forthcoming, so Chairman Higgins deferred the matter to the next meeting.

Secretary Crall stated that concerns or issues brought to the Personnel Cabinet, like the Duncan hiring, are investigated. Secretary advised that he has provided copies of letters to the Board that he sent to the Transportation Cabinet on two employment hiring actions, which were not defensible. The employees are Tony Disponett and Marjorie Ann Stewart. He stated these actions did not comply with KRS 18A.0751(4)(f) and 101 KAR 1:400. Secretary Crall encouraged the Secretary of the Transportation Cabinet to rescind the appointments or he would decertify the payroll based on the difficulty the Personnel Cabinet had with the hirings. Secretary Crall stated that Mr. Disponett had resigned. As it pertains to Ms. Stewart, the Transportation Cabinet filed a Motion to Dismiss its appeal in Franklin Circuit Court.

Secretary Crall received an e-mail from the Auditor's Office regarding the propriety of the hiring of Michael Bates in the Treasurer's office. Secretary Crall forwarded the e-mail to the OIG. He stated that there was evidence of non-compliance. So as not to become embroiled in politics, Secretary Crall advised that he chose not to exercise his statutory authority and he is deferring to the Board to do as they deem best. Secretary Crall wants to jointly agree on an appropriate course of action. Mr. Andrews asked if the Treasurer's office had responded to Secretary Crall's letter. Secretary Crall responded that he did not receive a response from the Treasurer's office, he just read what was published in the Herald-Leader. The article quoted a spokesperson who stated that the Personnel Cabinet's findings were "baseless and without merit under the law." Mr. Andrews asked Secretary Crall under what discretion/authority did he have to decertify the payroll, if the Treasurer's office did not respond satisfactorily to the allegations in a timely manner. Secretary Crall stated that under KRS 18A.030 the Personnel Cabinet shall investigate all matters, but that there is no timeframe. Secretary Crall will forward any

response from the Treasurer's office to the Board. Mr. Stephens said he would draft a letter and copy Bates' attorney.

On a final note, Ms. Hendricks stated that the Personnel Cabinet should set a timeframe for agencies to respond and that a response should be received before the Board should look at it and make a recommendation.

5. **PETITIONED POSITIONS** - None

6. **ORAL ARGUMENTS**

A. Jennifer Gregory, Kelvin Elliott and Michael Kemper v. Cabinet for Health and Family Services (3 appeals) (Request by Appellee)
MOVED TO NOVEMBER

B. Steven Wilson v. Cabinet for Health and Family Services

Present were the Hon. C. David Emerson, counsel for the Appellant, who had requested oral arguments; and the Hon. Anne Burnham, counsel for the Appellee. The parties answered questions from the Board.

7. **MOTIONS**

A. Priscilla Miller v. Justice and Public Safety Cabinet
-- Motion to Enforce Board's Order
-- Appellee's Response to Personnel Board Notice

The Hon. Paul Fauri stated to the Board members that the issue is now MOOT and the Appellant is back at work; therefore, no action is needed from the Board.

8. **INVESTIGATIONS**

A. Investigation regarding Transportation Cabinet (Petition filed by Doug Doerting)
--Response by Transportation Cabinet

Present were the Hon. Rob Roark, counsel for Transportation; Hon. Paul Fauri, counsel for Doug Doerting; Hon. Rob Jones, counsel for the Attorney General's office; and Hon. Allen Wilson, counsel for the Governors Office of Local Development. The parties answered questions from the Board.

9. CLOSED SESSION

Ms. Hendricks moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Center seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (11:25 a.m.)

Ms. Gibson moved to return to open session, Mr. Andrews seconded, and the motion carried 5-0. (12:50 p.m.)

10. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Jennifer Gregory, Kelvin Elliott and Michael Kemper v. Cabinet for Health and Family Services **(Moved to November)**

B. Steven Wilson v. Cabinet for Health and Family Services

Ms. Goodmann moved to note Appellant's exceptions, Appellee's response and oral arguments and to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

C. John McCann v. Transportation Cabinet **(Deferred from September Meeting)**

Ms. Hendricks moved to note Appellant's exceptions and oral arguments and to accept the Final Order as altered and attached to these minutes, with the appeal dismissing as to sick leave and sustaining as to accommodations. Ms. Gibson seconded and the motion carried 4-0, with Ms. Goodmann abstaining.

D. Anita Johnson Stotts v. Justice and Public Safety Cabinet

Mr. Andrews moved to note Appellant's exceptions, Appellee's response and oral arguments and to accept the Final Order as altered and attached to these minutes sustaining the appeal. Ms. Gibson seconded and the motion carried 5-0.

E. Brenda Wigley v. Justice and Public Safety Cabinet

Ms. Hendricks moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 5-0.

F. Deborah Anderson v. Finance and Administration Cabinet and Personnel Cabinet

Ms. Gibson moved to accept the recommended order as amended dismissing the appeal. Ms. Center seconded and the motion carried 5-0.

G. Louis D. Broyles v. Department of Fish and Wildlife Resources and Chad Parker

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

H. Lance Casey v. Justice and Public Safety Cabinet

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

I. James M. Drake v. Transportation Cabinet

Ms. Center moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

J. Damon Fleming v. Justice and Public Safety Cabinet

Ms. Center moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

K. Robert Naumowicz II v. Justice and Public Safety Cabinet

Ms. Center moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

L. Ivy Robinson v. Cabinet for Health and Family Services

Ms. Gibson moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

M. Terry A. Scott v. Justice and Public Safety Cabinet

Ms. Goodman moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

Show Cause Orders – Response Filed

The following case had a show cause order entered by the hearing officer recommending that the appeal be dismissed for failure to timely prosecute. The Appellant filed a response alleging sufficient cause to excuse her failure to appear at the scheduled hearing.

N. Pamela David v. Department of Juvenile Justice

Mr. Andrews moved to note Appellant's response, and finding the Appellant has shown sufficient cause for failure to appear at the hearing, rejects the Hearing Officer's recommended order dismissing the appeal and to return the appeal to the active docket. Ms. Hendricks seconded and the motion carried 5-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had show cause orders entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

- O. Susan Botts v. Cabinet for Health and Family Services
- P. Delmas Carter v. Allen County Sheriff's Department
- Q. Kelly Caudill v. Transportation Cabinet
--Appellant's Response (untimely)
- R. Montez Givens v. Personnel Cabinet
- S. Margaret Lee v. Personnel Cabinet
- T. Stephanie Vest v. Kentucky Housing Corporation
- U. Jessica Wilson v. Personnel Cabinet

Ms. Hendricks moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Ms. Gibson seconded and the motion carried 5-0.

11. WITHDRAWALS

Ms. Hendricks moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Andrews seconded and the motion carried 5-0.

- A. Eric Antle v. Personnel Cabinet
- B. Ralph Beach v. Transportation Cabinet
- C. David Cottle v. Transportation Cabinet
- D. Robert Edwards v. Environmental and Public Protection Cabinet
- E. Victor Holt v. Personnel Cabinet
- F. Phillip Newton v. Personnel Cabinet
- G. Eric Trent v. Personnel Cabinet

- H. Martha Wathen v. Personnel Cabinet
- I. Larry Wilham v. Justice and Public Safety Cabinet

12. SETTLEMENTS

Ms. Gibson moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Ms. Hendricks seconded and the motion carried 5-0.

- A. Isaiah Christopher James IV v. Cabinet for Health and Family Services
- B. Terry McKinney v. Transportation Cabinet

13. OTHER

- A. Investigation regarding Transportation Cabinet
(Petition filed by Doug Doerting)

Mr. Andrews moved to adopt the Executive Director's Order, as amended. Ms. Goodmann seconded and the motion carried 5-0.

- B. Proposed Changes in Regulations

Mr. Crocker will prepare a letter to Mr. Stephens adopting the Personnel Cabinet's Summary Plan Description and deferring the other proposed regulations.

- C. Proposed Budget Request

Mr. Sipek summarized the budget for the Board members. Mr. Crocker elaborated on the cost and time involved regarding the Board election procedures. He also stated he would submit proposed changes to the statute (KRS 18A.0551) for the November 2, 2007 Board meeting.

Mr. Sipek stated that before the Board discussed the election of officers, he wanted to discuss two matters about which he had been approached by the Personnel Cabinet: 1) Did the Personnel Board want to be involved in a joint announcement of the KHRIS project? and 2) Did the Personnel Board want to join in a press release for Conflict Resolution Day (one of the Governor's projects)? Mr. Sipek asked if there was any interest or discussion from the Board.

Chairman Higgins asked about the members whether they wanted to be involved in the KHRIS project. Ms. Hendricks stated that she disagreed with Board participation, but would consider including a statement from the Board. Chairman Higgins asked Mr. Sipek to provide a statement for the members to look at during the next Board meeting.

Chairman Higgins asked the members whether the Board should be involved in a joint press release. Mr. Sipek stated that the Board has never issued press releases. Ms. Hendricks stated that the Board should be perceived as being their own entity.

D. Election of Board Officers

Ms. Gibson moved to re-elect Chairman Higgins as Chairman. Ms. Hendricks asked if there could be a discussion first. She further stated that others should be given an opportunity to serve, if they want to. Ms. Hendricks felt that the election of officers should occur when all Board members were present.

After discussion, Chairman Higgins asked Ms. Gibson if her motion stood. Ms. Gibson renewed her motion to elect Chairman Higgins as Chairman for a one-year term. Ms. Center seconded and the motion carried 3-1, with Ms. Hendricks opposing and Mr. Andrews abstaining.

Chairman Higgins asked for a motion on Vice-Chairman. Ms. Hendricks made a motion to wait for the November 2, 2007 Board meeting, with a full Board, to vote for Vice-Chairman. Mr. Andrews seconded and the motion carried 5-0.

Chairman Higgins asked if there was any other business. Mr. Andrews stated that he wanted to explain his vote on the Stotts' appeal. After having reviewed the entire record, Mr. Andrews stated that he could not find one "scintilla of evidence" to support the allegations against the Appellant. There being no further business, Ms. Gibson moved to adjourn. Mr. Andrews seconded, and the motion carried 5-0. (1:30 p.m.)

Greg Higgins, Chairman

Tina Goodmann, Vice-Chairman

Betty Gibson, Member

Lisa Hendricks, Member

Rosemary F. Center, Member

Jackson M. Andrews, Member

Robert B. Frazer, Member